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In re Application of : DECISION ON
ZIGMANS et al :
Application No.: 09/937,691 :
PCT No.: PCT/NL00/00198 :
Int. Filing Date: 24 March 2000 :
Priority Date: 31 March 1999 : PETITION UNDER
Attorney's Docket No.: 9424.162USWO :
For: DEVICE FOR TREATING A SURFACE, :
IN PARTICULAR A LEATHER SURFACE, :
SUCH AS THAT OF LEATHER SHOES : 37 CFR 1.181

This is in response to applicants' "PETITION TO WITHDRAW OF ABANDONMENT BASED ON US PATENT OFFICE ERROR" filed 03 November 2004, which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 28 September 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a copy of the international application. Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter at such time.

On 29 October 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicants, inter alia, that an "Oath or declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date indicating that the current oath or declaration ... is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68" must be submitted within two (2) months from the date of this Notice or 32 months from the priority date of the application. Failure to properly will result in abandoned.

On 15 October 2004, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909), which indicated that applicants have failed to respond to the notification of MISSING REQUIREMENTS, mailed 10/29/2001 since no reply was received.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 15 October 2004, applicants have submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the petition, applicants have provided a copy of the items submitted on 07 February 2002, which includes, inter alia, checks and the "Express Mail" receipt providing proof of mailing on 2/27/2002.

DISCUSSION

The record shows that the checks of \$130.00 and \$920.00 submitted by applicants were processed on 02/07/02. However, the processing of the checks does not by itself establish that the Declaration was filed timely. For example, the correspondence could have included only the checks and not the Declaration. Nevertheless, in the instant situation, the money was applied to national stage application number 09/937,691. The copy of the checks accompanying the petition does not appear to contain any indication regarding the application number or other means to associate them to the application. Because the USPTO had no way to associate the application number with these check, another document or documents identifying the application number must have been filed with the checks. Applicants have provided, inter alia, a copy of the transmittal sheet, the express mail receipt, copy of the checks, and a copy of the signed Declaration, which were purportedly filed by "Express Mail." Another document must have been received by the Office for the Office to apply the money to the appropriate national stage application 09/937,761. Since Office cannot locate any of the documents purportedly filed by applicants, convincing evidence has been provided that the Office received and misplaced the documents purportedly mailed on 07 February 2002.

The transmittal letter, and Declaration accompanying the petition will be accorded a receipt date of 07 February 2002. The mailroom date for the checks in the RAM database is 07 February 2002. Also, applicants have provided a copy of the Express Mail label "EV036306044US" showing a USPS stamped date of 07 February 2002.

Applicants' evidence is accepted as *prima facie* that a Declaration was timely deposited with the U.S. Patent and Trademark Office on 07 February 2002. Accordingly, the date of receipt for the Declaration is 12 November 2003.

Consequently, the instant application has been improperly abandoned.

CONCLUSION

For the reasons above, the petition under 37 C.F.R. §1.181 is **GRANTED**.

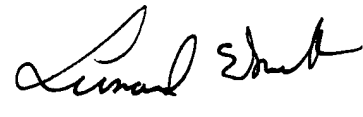
Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is **GRANTED**. The NOTIFICATION OF ABANDONMENT, mailed 15 October 2004 has been **VACATED**.

However, for the reason below, the application may not enter into national stage processing at this time. The declaration filed on 07 February 2002 is defective since it does not comply with 37 CFR 1.497(a)(3). A Declaration, under 37 CFR 1.497(a)(3) must identify each inventor. See MPEP § 602. In this instance, applicants submitted a composite declaration comprising of two sets of declarations, which one set is complete and the other is incomplete since each set must be complete by having the correct number of pages and listing all the inventors. One set is complete because it comprises of the six (6) pages of the declaration and list all the inventors. The second set is incomplete because it only contains a list of three of the four inventors and does not have the other pages of the Declaration to make it whole. Therefore the composite Declaration is defective.

A proper response to this decision is a new declaration, which must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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